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A Correct Public Policy Toward the Street Railway Problem

A Report of the National Municipal League Committee on Public Utilities in which All Previous Reports are Summarized and the Unsolved Elements of the Problems Listed.

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A Report of the National Municipal League's Committee on Public Utilities in which all Previous Reports are Summarized and the Unsolved Elements of the Problem Analyzed.[1]

I. A CRISIS IN LOCAL TRANSPORTATION

The fundamental dangers to the political institutions and the civic welfare of the country involved in the confusions and conflicts in the street railway situation at the present time are apparent in every place where urban or interurban street railway transit is an important factor in community life.

The policy of private management under partial public control has broken down. The hope of speculative profits which induced private investors to put vast sums of money into it is now dead. Street railway franchises requiring adequate service at reasonable rates are seen to be liabilities instead of assets. The street railway managers generally are in a "blue funk." They see no future ahead of them. The abandonment of the five-cent fare offers temporary and partial help, but not enough. Wages mount. Competition thrives. Traffic falls off. The people are more and more estranged. The business does not pay. The companies have sowed to the whirlwind of speculation; they are now reaping the sandstorm of disillusionment. Yet invested capital, like any man or beast, gets dangerous when it gets hungry. The whole complex financial structure of the street railways—fat underlying leases, gilt-edge first mortgages, guaranteed stock, operating companies, holding companies, super-holding companies and all—is on the verge of collapse.

Street railway service is a necessity in large cities. Yet the cities have not prepared themselves to assume responsibility for it. Capital is getting "ugly," and the public, in its alarm, is withdrawing the hand of regulation. Before we know it, we are likely to find the street railway in the status of a private enterprise operated solely for the benefit of the investors, though still holding its privileged status in the public streets. Instead of a public utility, designed to render the greatest possible amount of service to meet the public needs of urban communities, it will be a mere private business conducted solely in the hope of securing profit or avoiding loss to its owners.

THE PRESENT CONDITION IS A PUBLIC MENACE

First, the stability of the country's financial and industrial organization during the reconstruction period is seriously imperilled as a result of the financial strain upon this strategic industry in which several billion dollars have been invested and several hundred thousand men find employment.

[1] The original draft of this report was presented at the Cleveland Conference, December 30, 1919, by Dr. Delos F. Wilcox, chairman of the committee. It has since been revised and enlarged for publication in the *Review*. The members of the public utilities committee, besides the chairman, are the following: Alfred Bettman, of Cincinnati; John P. Fox, of New York; John A. Harzfeld, of Kansas City, Mo.; Stiles P. Jones, of Minneapolis; William M. Leiserson, of Toledo; George C. Sikes, of Chicago, and Clinton Rogers Woodruff, of Philadelphia.

Second, a public service, essential to the urban population of the country, is being curtailed, and its partial or complete breakdown is threatened by reason of the unsound financial condition of the agencies through which it is furnished.

Third, the control of public authority over the street railway is being loosened and its character as a public utility is being destroyed as a result of its financial distress and the unreadiness of the public to assume responsibility for street railway construction and operation.

Fourth, and perhaps most important of all, with the curtailment of service and expenses rendered necessary by the financial distress of the street railways, there is grave danger of an unprecedented series of conflicts between the companies and their employes, resulting in interruption of service, paralysis of business and possible development of social disorders of the most serious character at a time when social disorders involve the greatest public peril.

From the point of view of the investors in street railway securities, it is property rights that are at stake. From the point of view of the operatives, it is a living wage and participation in management that are at stake. From the point of view of the millions who are dependent upon the street railways for local transportation, it is an essential community service that is at stake. From the point of view of the community as a whole, it is the orderly development of democratic institutions during and after the reconstruction period that is at stake.

A WARNING ILLUSTRATION

An illustration will suffice to show the importance of the street railway problem from every point of view, and the financial, social, and political dangers that result from bungling it. On November 1, 1918, a five-car train, packed with men and women, residents of Brooklyn, returning home from the day's work in the downtown business districts of New York, was wrecked on one of the Brooklyn Rapid Transit lines, with the result that more than ninety people were killed and two hundred others were injured. A strike of the rapid transit motormen had been called on that day as a protest against the failure of the company to reinstate certain employes as recommended by the National War Labor Board in its award of October 24th. The board found that these employes had been dismissed on account of legitimate union activities, contrary to the labor policy announced by the President of the United States for the war period and contrary to the policy which the board itself had adopted in dealing with all similar cases. The wrecked train was being operated by an inexperienced substitute motorman. Public opinion in Brooklyn flamed up against the company and demanded that those responsible for the terrible accident should be prosecuted and punished. The mayor of New York personally undertook as a magistrate to investigate the accident, and following this investigation the motorman and four high officials of the company were indicted for manslaughter. The defendants were so much alarmed by the public feeling against them that they demanded and secured a change of venue to a county outside of New York City.

Meanwhile the company was faced with the problem of paying the enormous damages that would inevitably be awarded as the result of such an accident. Before the accident, the company had already applied for an increase of fare from five cents to

seven cents, on the plea that the increased cost of operation made it impossible to continue furnishing service at the franchise rate. At the end of December, 1918, the company went into the hands of a receiver appointed by the federal court. In preparation for their defense, the indicted Brooklyn Rapid Transit officials employed as associate counsel two of the judges in the county in which the trials were to take place. Public opinion in Brooklyn was further inflamed by this action and a measure was introduced into the legislature at Albany, and was passed by the senate, to prohibit these judges from serving as counsel in the cases. Meanwhile the trials of two of the defendants went on and resulted in acquittals. The proposed legislation not having become effective, the county judges played their part in selecting the jury and in summing up the evidence. A third trial recently resulted in a disagreement. An accident, probably the most terrible in the annals of local transportation in the United States, and resulting directly from a dispute between the company and its employes over the question of organization, bids fair to pass into history without any legal punishment being inflicted upon those who were responsible directly or indirectly for it. The hostility of the public and its sense of the futility of all efforts to secure adequate service from this company are accentuated by the fact that the Brooklyn Rapid Transit itself is a holding company, not subject to the jurisdiction of the public service commission, and carries on its public activities through a group of subsidiary companies whose financial and legal relations are so intricate as to baffle public understanding. The accident and the outcome of the trials only accentuated a feeling of bitterness against the company that poisoned the political atmosphere of Brooklyn and has rendered next to impossible any solution of the local transit problem that is dependent upon a spirit of co-operation and mutual good-will between the public and the company.

This Brooklyn Rapid Transit accident and its complex and far-reaching consequences illustrate how the whole street railway situation is charged with dynamite. The mere suggestion that, through a financial breakdown necessitating the neglect of equipment, or through a disagreement between companies and their employes leading to the temporary use of inexperienced substitutes, the operation of local transit systems in the great cities of the country may become subject to such disasters as that which occurred in Brooklyn a year ago last November, is ominous of the dangers ahead unless a prompt solution of the street railway problem is found. The dynamic possibilities for evil of the present condition of the street railway business in the United States could be illustrated in other ways from the experience of almost every city in the country. Danger to life through the physical deterioration of equipment and the demoralization of the operating force is only one of the perils that confront us.

THE LACK OF A DEFINITE PUBLIC POLICY

It cannot be denied that the American people, through their governmental agencies, are failing miserably with respect to the public utility function. This is primarily due to the overload of individual as compared with community initiative that is characteristic of our country. The problem is made much more complex by the fact that so far as street railways are concerned, public policy is determined primarily by forty-eight different commonwealths, and secondarily by hundreds

of individual municipalities. In some instances, even local transportation systems are operated in two separate states. A notable illustration is the local street railway system of the two Kansas cities. Another is the street railway system of Omaha and Council Bluffs. Another is the Hudson tubes operating between New Jersey and New York. In such cases there is a chance of conflict between the policies of two states with respect to the same local transportation problem. When it comes to municipalities, the opportunities for diversity of aim and for conflict of policy are almost infinite. In New Jersey, a single street railway company serves no less than 141 municipalities. Similar conditions on a somewhat smaller scale are found in Massachusetts, Connecticut, Rhode Island, Pennsylvania, Ohio and other states, where cities are close together and interurban street railway communication has been developed.

Street railways were originated as local urban utilities. The development of local transit is a legitimate and necessary concern of municipal policy, as it is vitally related to city planning, the distribution of population and other essential urban problems. In recent years, however, partly as a foil to the agitation for municipal ownership, the states generally have adopted the policy of regulation through state commissions. A blind conflict has arisen between state and municipal aspirations, with the result that instead of the co-operation between central and local authorities, which in the nature of the case is essential to the successful control and development of public utilities under modern conditions, we have almost everywhere a spirit of antagonism and political strife by means of which both the municipalities and the state agencies have been paralyzed and rendered ineffective in the development and application of public policies with respect to public utilities.

Under these conditions the need for a definite, constructive street railway program, formulated in the public interest and supported by a crystallized and intelligent public opinion, is imperative.

II. PUBLIC POLICY AS DEVELOPED BY THE NATIONAL MUNICIPAL LEAGUE, 1900–1920

For the past twenty-five years the National Municipal League has served as a constructive agency in the development of municipal policies in this country. In the formulation of the first municipal program twenty years ago it took advanced ground with respect to the control of public utilities and, during the past ten years, its committee on franchises has given extended consideration to this problem. The League recommended in the original municipal program, adopted after prolonged consideration, that "every city . . . shall be vested with power to perform and render all public services," subject to any express limitations that may be contained in the constitution and statutes of the state. It proposed that bonds issued for water supply, "or for other specific undertaking from which the city will derive a revenue," shall not be subject to the general debt limit unless the particular undertaking, after five years of operation, fails to be self-sustaining. In brief, the original municipal program was based upon the theory of rational municipal home rule with respect

to public utilities as with respect to other municipal problems, and recognized the principle that public utility debts should be treated in a different way from debts incurred for non-productive improvements.

PUBLIC UTILITY PROVISIONS OF NEW MUNICIPAL PROGRAM

The new municipal program, adopted by the League in 1915, includes "Municipal Home Rule Constitutional Provisions" recommended for incorporation in the state constitutions. One of these provisions is to the effect that "each city shall have . . . authority to exercise all powers relating to municipal affairs." This grant is made specific with respect to public utilities by the further provision that the following shall be deemed to be a part of the powers conferred upon cities, namely: "to furnish all local public services; to purchase, hire, construct, own, maintain, and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by the general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof"; also "to issue and sell bonds on the security . . . of any public utility owned by the city, or of the revenues thereof, or of both, including . . . if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility."

The new municipal program, in the subdivision relating to the model charter, contains specific provisions with relation to public utilities (Sections 63–72, inclusive). The general policy recommended by the League is expressed in a footnote appended to the sections relating to public utilities, as follows:

Note 20. The public utility and franchise policy embodied in a model city charter should be so formulated as to conserve and further the following purposes:

I. To secure to the people of the city the best public utility service that is practicable.

II. To secure and preserve to the city as a municipal corporation the fullest possible control of the streets and their special uses.

III. To remove as far as practicable the obstacles in the way of the extension of municipal ownership and operation of public utilities, and to render practicable the success of such ownership and operation when undertaken.

IV. To secure for the people of the city public utility rates as low as practicable, consistent with the realization of the three purposes above set forth.

It should be no part of such policy to secure compensation for franchises, or special revenues for general city purposes, by an indirect tax upon the consumers of public utility services.

In formulating a policy to carry out the four purposes above stated the following principles should be recognized:

1. Each utility serving an urban community should be treated as far as practicable as a monopoly with the obligations of a monopoly; and its operation within the city should be based as far as practicable upon a single comprehensive ordinance or franchise grant uniform in its application to all parts of the city and to all extensions of plant and service.

2. Every franchise should be revocable by the city upon just compensation being paid to its owners, when the city is prepared to undertake public ownership.

3. The control of the location and character of public utility fixtures, the character and amount of service rendered and the rates charged therefor should be reserved to the city, subject to reasonable review by the courts or a state utilities commission where one exists.

4. The granting and enforcement of franchises and the regulation of utilities operating thereunder should be subject to adequate public scrutiny and discussion and should receive full consideration by an expert bureau of the city government established and maintained for that purpose, or in case the maintenance of such

bureau is impracticable, by an officer or committee designated for the purpose.

5. Private investments in public utilities should be treated as investments in aid of public credit and subject to public control, and should be safeguarded in every possible way and the rate of return allowed thereon should be reduced to the minimum return necessary in the case of safe investments with a fixed and substantially assured fair earning power.

The policies above outlined have been adopted by the National Municipal League.

SUGGESTIONS FOR A MODEL STREET RAILWAY FRANCHISE

At the conference held at Richmond, Virginia, in November, 1911, a subcommittee of the committee on franchises submitted a report outlining the elements of a model street railway franchise. In its conclusions this subcommittee said:

In our opinion the first consideration in the operation of a street railway should be the rendering of sufficient first class service. In order to secure this result practically, the franchise should not only reserve to the city specific and comprehensive regulatory powers, but in all cases where there is no existing state or local authority for the purpose should make provision in detail for a supervising commission or officer, with adequate means for enforcing the contract and compelling the grantee to give such service.

The second consideration, in our judgment, should be the protection of the capital legitimately invested in this public service. The aim should be to make street railway securities approximately as safe as municipal bonds. We esteem it a disgrace to a city either to lend the use of its streets for the exploitation of the credulity of unwary investors or to impose such severe restrictions upon capital honestly invested in a public utility as to drive the franchise-holder into bankruptcy. We also think it to be a lamentable error in public policy for a city by laxity in supervision to permit the grantee of its franchises so grossly to mismanage a public utility and overload its capitalization as to deprive the public of adequate service and at the same time endanger the security of invested capital.

We consider that while the question of street railway fares is of great importance it is after all secondary to the furnishing of adequate service, to the honest protection of necessary investment, and to the gradual amortization of the capital for the benefit of the city. We think that the franchise should prescribe an initial rate of fare, but should provide for an occasional readjustment either through regulation or by means of an automatic schedule of rates specified in the grant itself. An interesting experiment with the latter policy is now being made in Cleveland, and the final results there will throw important light upon this method of adjusting rates. Whatever rate may be in force at any particular time we think that as far as practicable it should be uniform within the city limits, and that a general system of transfers without extra charge should be provided.

We have considered with care the question of compensation for franchises. In our judgment the car riders should not be taxed for the relief of the general tax rate. While there are strong arguments for the policy of requiring a franchise holder to pay taxes at the regular rate on the value of its property outside of the streets, we think that at least all compensation in excess of this requirement, whether in the form of general city taxes, car license fees, a percentage of gross receipts or a division of net profits, should be applied either to the construction of extensions on the city's account, or to the amortization fund, or should be remitted for the benefit of service or for the reduction of rates.

The public necessity of maintaining continuous service on a street railway system is so great that in our judgment the franchise should provide some method for the arbitration of labor disputes so as effectively to prevent strikes.

We have been impressed by observation and experience with the tremendous cost in human vitality represented by the time and energy wasted in transit. It is often true that a half hour or an hour spent on a crowded, poorly lighted, badly ventilated street car at the end of a hard day's work is a greater tax upon a person's strength than an extension of the day's labor for the same time would be. The cost of transportation is not to be measured merely by the fares paid. The representatives of the city in framing a street railway franchise contract and in the regulation of street railway service

should constantly keep in mind the conservation of human energy as well as financial considerations.

STATE AND LOCAL CO-OPERATION IN THE CONTROL OF PUBLIC UTILITIES

Two years later, in November, 1913, the full committee on franchises submitted a carefully prepared report at the Toronto conference in which it discussed at considerable length the matter of municipal home rule in its relation to the control of public utilities, and took the position that co-operation between state and local authorities, rather than exclusive control by either of them, is essential to the protection of the public welfare in the matter of the regulation of public utilities. Its general outline of a proper co-ordination of state and local functions in this respect is contained in the following paragraphs of the report:

The extent to which state control of utilities is necessary and the extent to which local control is possible vary greatly in different parts of the country. In states where cities are widely separated, each urban community naturally forms a more or less independent utility center, and municipal control may be developed to a great extent without interfering with the rights of other communities. Moreover, in the case of a great city where the bulk of the service of any particular utility is rendered within the corporate limits, the city's overwhelming "majority interest" in the utility requires the city, for its own protection, to maintain a large measure of local control. Under other circumstances, where cities are bunched together, as they are in eastern Massachusetts and northern New Jersey, it is obvious that unless some new form of co-operation among neighboring municipalities is developed, state control of the utilities will necessarily go much further than is necessary where cities are physically remote from one another.

In view of these various considerations, we suggest that where a city has assumed actively to exercise the functions of regulation, it shall have substantially final authority with relation to the occupation of the streets, the quality of service rendered and the nature of the franchise contract which it may desire to make for the purpose of facilitating the transfer of the property from private to public ownership. In all matters where an appeal lies from the decision of the local authorities, as in the matter of rates or extensions, and in all matters where the state commission has primary jurisdiction, especially in questions relating to competition, accounts and publicity, we suggest that the local department or commission, representing the city's interest and its intelligence on public utilities, have the right to appear officially before the state commission to present the city's case. In other words, in certain important lines of regulation the city should have final authority; in certain other matters the city should have primary jurisdiction, and, in case of appeal, should have the right to be represented officially before the state commission by its local utility experts; while in still other matters the jurisdiction of the state commission should be regarded as normal and complete, but even in these matters the city should have the right to appear in its corporate capacity to make suggestions or to protest against any proposed action affecting utilities that operate within the city limits.

A POLICY WITH RESPECT TO EXTENSIONS

The committee also in its Toronto report outlined certain fundamental principles to be adopted in all municipal franchise contracts with respect to the control and financing of extensions. The committee said in part:

We believe that a public utility within a given urban community is a natural monopoly, and that one of the first and absolutely essential obligations of such a monopoly is to extend its services to meet all the legitimate needs of the community. . . .

The problem of extensions is a delicate and difficult one. Obviously some power of initiative as well as of veto on the part of the public authorities is necessary. At the same time it is clear that any company could be driven into bankruptcy by the arbitrary exercise on the part of the local authorities of unlimited control over extensions. The construction of an extension means an additional capital investment, and the power of the city to order a private company to

build an extension is the power to compel the stockholders to put more capital into the enterprise, either out of their own pockets or out of the proceeds of bond issues. While it is our opinion that the local authorities should have the right to initiate extensions, it seems to us necessary that the company should have an appeal to impartial authority, preferably the state public utilities commission, for a review of the question of the necessity and financial feasibility of any particular extension ordered by the city authorities. It should not be necessary for the city to show that any particular extension which public need demands would be self-supporting as a separate part of the street railway system, but the earning power of the entire system and the effect of the extension upon the financial condition of the company, taken as a whole, should be among the determining factors.

In many cases it may be found that an extension is desirable, the cost of which would, nevertheless, prove an unreasonable drag upon the system as a whole if paid out of capital account. Under such conditions, the persons who will receive the greatest financial benefit from the construction and operation of the extension are, undoubtedly, the owners of the land that will be made valuable for residential or business purposes by reason of the extension. In our opinion, therefore, provision should be made by which an extension could be built out of the proceeds of special assessments, or directly by the property owners, in cases where the construction of the extension would not otherwise be justified, but where the operation of the extension without the burden of fixed charges would not be an unreasonable burden upon the street railway system as a whole and would be of benefit to the community.

DURATION OF FRANCHISES AND AMORTIZATION OF INVESTMENT

With respect to the duration of franchises, the committee analyzed the advantages and disadvantages of the pure indeterminate franchise of the Massachusetts type and of the indeterminate permit of the Wisconsin type. It called attention to the danger that an indeterminate franchise without any time limit would practically amount to a perpetual franchise, and reached the following conclusion:

In our opinion, it is important that the franchise should be granted for a definite maximum term, subject to the right of the city to terminate the grant in case it is willing to purchase the property at a fair price prior to the expiration of the grant. The pure indeterminate franchise would be relieved of some of its dangers if the policy of requiring public utilities to adopt an amortization scheme for the gradual reduction of their capital investment for the benefit of the city should be embodied in the general law as a universal and positive obligation.

With respect to the amortization of the investment out of earnings, the committee referred to the evils of overcapitalization and took the position that under a proper resettlement franchise any recognized elements of intangible value should be amortized as quickly as possible. Upon this point the report states:

It is not our intention in this report to go into the merits of the temporary capitalization of such items as development expenses, losses due to obsoleteness and inadequacy, etc. We desire, however, to state emphatically that in our opinion the experience of the utilities of the country, and perhaps especially the transportation utilities, has been such as to give a distinct warning against the policy of permanently capitalizing superseded property, accumulated deficits and intangible elements of value. Whatever may be necessary in an adjustment of the capital account, fair alike to the investor and to the public, we are of the opinion that all these elements —sometimes included in appraisals in excess of the permanent value of the physical property— should be written out of capital within a comparatively short period of years. The tendency of the investment to bulge is one that should be as firmly resisted as the tendency to overload a city with debt representing in part improvements that have outlived their usefulness. This policy of holding down the capital account is in our opinion necessary: (1) in order that the investment itself may be safe and stable; (2) in order that rates may be kept within reasonable limits; and (3) in order that the purchase price, which is the touchstone of the franchise contract from the

standpoint of possible municipal ownership, shall be brought within the limits of the city's financial ability.

The report recognized that there might be a legitimate difference of opinion as to the advisability of requiring the amortization of the entire capital account of a public utility while it is being held under private ownership. "It should be made perfectly clear," says the report, "that the amortization we refer to is not the amortization of the company's bonds for the benefit of its stockholders, but the amortization of the investment itself, represented by both stocks and bonds, as a process for the gradual transfer of the ownership of the property from private to public hands." As between the theory that the entire capital account should be amortized and the theory that only the intangible elements and superseded property need be amortized, the committee did not feel called upon to make a definite choice in this report, but stated that the members were unanimous in the opinion that amortization should be carried *at least* as far as contemplated by the second of these theories.

RESETTLEMENT FRANCHISES

With respect to the resettlement of outstanding franchises, the committee took the following position:

In our opinion, it is essential to the proper development of the utilities of any city and to the full realization of the principles of public control, that, in all cases where the outstanding franchises run in perpetuity or for unreasonably long periods, the city should definitely set about devising means for recapturing them. While it is our opinion that every legitimate investment in a necessary public utility should be carefully protected, we do not believe that franchises as such should be irrevocable, or that they should have special value apart from their function of giving life to the property of the utility.

There is a well-established rule of law that all grants involving franchise rights in the streets should be construed strictly and strongly in favor of the public. In many jurisdictions this rule has come to be known chiefly by the exceptions to its enforcement. We believe that it is a sound rule and should be strictly applied, especially in all cases involving franchises the terms or conditions of which are clearly contrary to sound public policy. We think, therefore, that the municipal and state authorities are justified in using legislation, litigation, taxation, negotiation and all other available means to secure the termination of perpetual and very long-term franchises, and to compel a readjustment of outstanding rights on the basis of thorough-going protection of the investment under the terms of new franchises which will recover to the city the control vitally necessary to its future welfare.

. . . . .

We do not believe that it is possible for cities to treat perpetual franchises or 999-year grants as worth the face value claimed for them by their owners, and at the same time attempt, either by negotiation or by condemnation, to acquire the utilities, paying the alleged value of the perpetual franchises. We regard it as highly impolitic and unethical for the city to perpetuate these burdens upon the future so long as there are means left within the power of the state, or the city, to destroy or at least greatly reduce these illegitimate franchise values, which, if capitalized, could never be sustained either under private or under public ownership, except on the basis of exorbitant rates or subsidies from taxation.

PUBLIC REGULATION OF WAGES, HOURS AND CONDITIONS OF LABOR

In 1915 the Consumers' League asked the National Municipal League to take up the questions of the eight-hour day and the minimum wage in connection with the granting of public utility franchises. In 1916 the threat of a nation-wide strike of the railroad workers, followed, as it was, by the enactment of the federal "eight-hour law," and the actual strikes on the most important transportation systems of New York city, focused public attention

upon the labor problem in connection with the operation of public utilities. To meet this situation the committee on franchises prepared a report on "Public Regulation of Wages, Hours and Conditions of Labor of the Employes of Public Service Corporations," which was presented at the conference held at Springfield, Massachusetts, in November, 1916. In this report the committee recognized the employes, the employing corporations and the public, for whom the service is necessary, as the three parties to labor disputes in public utilities, and presented the following analysis of these interests:

First, as to the employes, their legitimate interests, without regard to excessive demands sometimes made by them, may be classified as follows:

a. To secure fair living wages reasonably corresponding with the difficulty and the responsibility of the work they perform.

b. To have their working day of a reasonable length, in consideration of the character of the work and the general labor standards of the community, and to have their hours of work as compact as the nature of their employment will permit.

c. To have the conditions surrounding their work so organized as to be consistent with the reasonable safety, health, comfort and self-respect of the workers.

d. To be assured of continuity of employment, appropriate advancement for efficiency and length of service and ultimate protection from want in case of sickness, injury or permanent disability.

. . . . .

Second, as to the employers, the public service corporations, it is clear that their ultimate interest is the financial one, although this may be translated through a process of enlightened selfishness to include other immediate interests which have the appearance of being more human and generous. But treating their ultimate interest as the controlling one, we may subdivide and classify its specific manifestations as follows:

a. To get the necessary service performed at the lowest possible labor cost by keeping wages down and by limiting the number of employes.

b. To have their property operated and cared for in such a way as to promote its efficiency, maintain its integrity and prolong its useful life as much as possible.

c. To have continuity of service maintained so as to insure continuity of revenues and the protection of their franchises.

d. To have their employes efficient in the collection of revenues and careful and honest about turning them in.

e. To have the service as efficient as possible within given limits of cost so as to earn for the companies the good-will of the public and thus secure for them protection from competition and from adverse governmental acts.

. . . . .

Third, as to the public, its interests are numerous and intense, and now are claiming to be in certain important respects preponderant. We may analyze them as follows:

a. To have continuity of service.

b. To have safety both in connection with the general use of the streets and in connection with the use of the service offered by public utilities.

c. To have public utility employes intelligent, efficient and courteous in order that the service may be good.

d. To have the labor cost of the service kept as low as possible and to have all the legitimate revenues of the utility collected without favoritism and accounted for without fraud in order that the prosperity of the company may lead to better service, lower rates or the sharing of the profits for the reduction of general taxation.

e. To have the public utility plants maintained in a high state of efficiency so that they will be able to respond to the constantly increasing demands of service and, in case of acquisition by the city, not have to be sent to the scrap heap.

f. To have the men and women engaged in the operation of utilities treated according to the best standards of public employment, as being semi-public employes engaged in rendering a necessary public service.

After outlining the means available to the employes, the employers and the public for the protection of their several special interests, the committee said:

This discussion of the special interests of the three respective parties and of the special means available to each of them for the protection of these interests would leave us helpless in a welter of conflicting forces and an anarchy of practical results, if it were not for the fact that above the employes, above the corporations and even above the consuming public, stands the higher power of the community, which includes all three parties and which has a powerful interest in harmonizing as far as possible, and in compromising where harmony is out of the question, the subordinate individual interests of the three parties. Above all, the community is interested in seeing that justice is done. Therefore, we may combine in our further discussion the several more or less

divergent movements that have for their aggregate purpose to see not only that the employes, employers and consumers get their just rights but also that they perform their just duties.

THE PREVENTION OF STRIKES ON PUBLIC UTILITIES

The committee then stated that it had given consideration to certain specific questions and had reached a general agreement as to the answers that should be given to them. The questions in full and the answers in abbreviated form follow:

Question 1.—Is the public interest in the continuous operation of any or all public utilities sufficient to warrant the adoption of legal measures to prevent strikes?

Our answer to this question is an emphatic affirmative. We recognize that thus far the *danger* of the interruption of service is greatest in the case of transit, and, therefore, that the need of measures to prevent strikes is more pressing here than in other utilities. . . .

Question 2.—If the right of public service employes to strike is curtailed, or denied altogether, then shall public guaranties be given that their legitimate interests will be protected?

Again, our answer is an emphatic affirmative. The proposal to limit or deny the right to strike has its basis in the recognition of *the public character of the business*, the same fact that justifies the regulation of rates and services. As the theory of rate regulation necessarily involves a recognition of monopoly and a partial or complete protection against competition, so the limitation of the right to strike necessarily involves the protection of the employes against those evils for which the strike has heretofore been the ultimate remedy. . . .

Question 3.—If the state curtails the use of the strike and assumes the protection of the interests of the employes, in what particular respects must control of their relations with their employers be assumed?

Speaking broadly, we may describe the vital interests of the employes for the protection of which the strike is now the ultimate weapon, as wages, hours of labor and conditions of work. In "conditions of work" we include not only provisions for physical safety and comfort, but also the rules relating to performance of duties, discipline, discharge and the hearing of grievances.

Question 4.—By what general method is public control of the relations between public utility employes and their employers to be established?

Three methods suggest themselves as possible: (a) the inclusion of the necessary provisions in franchise contracts, as suggested by the Consumers' League; (b) the general regulation of all these matters from time to time by statute or ordinance, and (c) the fixing of standards by regulating commissions or tribunals.

. . . . .

We believe that wherever well-equipped public service commissions exist, the duty of establishing detailed standards and rules relative to the relations of the public service corporations and their employes may properly be imposed upon such commissions. This is quite apart from the settlement of particular disputes and the fixing of specific wages, hours and conditions of employment in particular cases, as to which we shall speak later on.

In brief, so long as the control of public utilities continues to be effected by different methods in different states and cities, we are of the opinion that the control of the relations between the utilities and their employes may properly be effected by the same methods. Thus, franchises, state laws and local ordinances and the orders of regulatory commissions may all be made use of for this purpose at different times and in different places according to the circumstances and the inherent possibilities of each case.

Question 5.—If the ultimate protection of the employes of public utilities is to be assumed by the community, what particular means ought to be adopted for dealing with them? Should the unions, with the right to strike curtailed, be continued as the most advantageous means of getting the grievances and demands of the employes formulated and presented to the employers, and, when necessary, to the public authorities on appeal?

In our opinion, the advantages of collective bargaining to all parties concerned are so great and so obvious that at the very least no public action should be taken to discourage the organization of the employes of public utilities for all legitimate purposes. We take this position

fully recognizing the fact that the assumption by the community of the protection of the employes, like the regulation of rates and service, is a step in the direction of ultimate public ownership, and that any methods of settling labor disputes established with public approval under private ownership will be likely to be carried over into the public service if at a later time the community undertakes municipal operation. We believe that from the point of view of the public itself, the best results can be obtained when intelligent representatives speak for a group or union, rather than leave every individual employe to speak for himself. This will probably hold good even where complete municipal operation obtains.

Question 6.—Shall the ultimate adjustment of specific difficulties between public service employes and their employers be referred to a tribunal established for the adjustment of similar questions between employes and employers generally, or to special tribunals improvised in each particular case, or directly to the public service commission or other regularly constituted authority, as such difficulties arise from time to time?

. . . Permanent general tribunals for arbitration and conciliation, even if given authority to reach definite and binding decisions, have to deal for the most part with situations not quite analagous to those which prevail in connection with public utilities. It might readily happen that the reduction of rates by one tribunal and the raising of wages by another would subject a public service corporation to a ruinous squeezing between the upper and the nether millstones. On account of the intimate interdependence of rate regulation and wage regulation in the case of public utilities, a great deal can be said in favor of giving both functions to the same body. The advantages of this policy are emphasized when we reflect upon the fact that the performance of the wage-regulating function as well as the establishment of the hours of labor and the conditions of labor, requires the collection of data and statistics based upon continuous observation. For the collection of the facts the public service commissions are already fairly well-equipped. For the reasons given, we are of the opinion that experimentally the power to fix wages and to settle disputes between public service corporations and their employes should be conferred by law upon the public service commissions, in terms calculated to secure promptness in the rendering of decisions and finality for definite though comparatively short periods of time.

PREPARATION FOR PUBLIC OWNERSHIP

Finally, in a report submitted at the Detroit conference in November, 1917, the committee on franchises, after discussing certain recent developments in the public utility field affecting franchise policies and municipal ownership, made the following recommendations:

1. That every state remove the handicaps from municipal ownership by clearing away legal and financial obstacles, so far as they are now embedded in constitutional and statutory law.

2. That every state provide expert administrative agencies for the regulation and control of public utilities. These agencies should have full jurisdiction over interurban services and over local services where the local authorities are unwilling or unable to exercise local control. They should have limited jurisdiction wherever the local authorities are in a position to exercise the full normal functions of municipal government, and should even have jurisdiction with respect to accounting and reports in the case of utilities owned and operated by municipalities.

3. That every city where public utilities are operated primarily as local services should definitely recognize these services as public functions and set in motion at once the financial machinery necessary to bring about the municipalization of public utility investments at the earliest practicable moment.

4. That every such city, pending the municipalization of its utilities, recognize the necessity of giving security to public utility investments and to a fair rate of return thereon, and to that end assume as a municipal burden the ultimate financial risks of public utility enterprises and insist upon receiving the benefits naturally accruing from this policy in the form of a lowered cost of capital.

5. That every city definitely adopt the policy of securing public utility service to the consumers either at cost, or at fixed rates not in excess of cost with subsidies from taxation whenever needed for the maintenance of the service at the rates fixed.

6. That every large city provide itself with expert administrative agencies for the contin-

uous study of local utility problems; for the adjustment of complaints as to service; for the preparation and criticism of public utility contracts and ordinances; for the formulation of standards of public utility service; and for adequate representation of itself and its citizens in proceedings before the state commission or other tribunals affecting the capital stock and bond issues, the inter-company agreements, the accounting methods, the reports, the valuations, the rates, and the practices of public service corporations operating in whole or in part within the city's limits.

We believe that the foregoing includes only the essential points in the development of a constructive public utility policy, and that there is the most urgent need of the definite formulation and adoption, by the several states and cities of the country, of definite programs based upon the principles above outlined.

III. UNSOLVED PROBLEMS THAT DEMAND IMMEDIATE ATTENTION

It will be seen from the foregoing that the National Municipal League and its committee have already given prolonged and serious consideration to the problem of the control and ultimate municipal ownership and operation of public utilities, particularly of street railways. But within the past two years the situation in the public utility world has become extremely critical and the need for the adoption of measures to carry out the policies which the League has heretofore recommended is apparent. Never before has the need for constructive work of this kind been so imperative as it is right now. We can no longer rest content with the declaration of general principles, because the problems requiring practical solution are immediate, insistent and threatening. The following definite pieces of work ought to be undertaken at once:

(1) An investigation and analysis of the problems of public utility control with particular reference to the delimitation of the powers and functions of the state and local authorities respectively, and to the devising of plans by which the effective co-operation of state and local authorities can best be secured in the control of public utilities. This calls for the preparation of a model public utilities law, particularly with respect to the agencies through which control shall be exercised and with respect to the organization of public utility districts for the purpose of exercising local public utility powers where particular utilities are necessarily or advantageously operated as units within two or more municipalities, whether the utilities are privately or publicly operated. This would probably involve the publication of a volume containing the results of the investigation and an analysis of the problem of state and local regulation.

(2) The formation of definite policies and the preparation of definite plans for the consummation of municipal or state ownership and for the successful public operation of public utilities. This will necessarily include—

(a) The preparation of specific constitutional amendments and enabling legislation in states where such measures have not already been provided.

NEW CONDEMNATION LAWS REQUIRED

(b) The preparation of special condemnation laws to facilitate the acquisition of public utilities upon just and reasonable terms. This matter of condemnation laws involves many important problems. First, there is the determination of the extent of the municipality's obligation to acquire the

property of an existing utility rather than construct a competing plant. Then there is the question as to what property must be included in condemnation proceedings and as to the principles upon which severance damages, if any, shall be estimated. Also there is the question as to the principles of valuation to be applied in the acquisition of property already devoted to public use and subject to the charter and franchise obligations under which it is operated, as compared with the principles of valuation applicable where purely private property is taken for public use against the wishes of the owner. Furthermore, there is the question of the tribunal by which the valuation is to be made and of the facilities to be guaranteed to the public body instituting the condemnation proceeding for access to the physical property and to the records of its operation in the preparation of evidence to be laid before this tribunal. It is well known that in many—perhaps in most—cases, the men who represent public utilities in negotiations for the adjustment of rates or for the sale of the property are not in a position where they can agree to a capital value or purchase price that would be fair to the public. It is essential, therefore, that the process of condemnation be perfected so as to be adapted to the ready and prompt determination of a just value.

(c) The preparation of constitutional amendments and legislation necessary to enable the cities or public utility districts to secure the funds for the purchase of the utilities on the most advantageous terms possible. This involves the question of constitutional and statutory debt limits; the question of the issuance of bonds for utility purposes outside of the debt limit under certain conditions; the question of the issuance of bonds as a lien upon the property of the utility with a franchise for the operation of the utility in case of default; and the question of the issuance of utility bonds or certificates secured by a lien upon the earnings of the utility similar to the plan under which the city of Seattle has recently taken over the local street railway system.

(d) The preparation of administrative plans for the public operation of utilities, designed to make such operation efficient and responsive to the community's needs. This involves questions relating to the constitution of the agency to which public operation is to be entrusted, the character and responsibility of the management, the rules for employment, promotion and dismissal, the rules for the purchase of supplies, the rules for accounting and reporting and the rules for the handling of consumer's complaints.

(e) The preparation of plans for the adjustment of disputes between the employes and the management of the municipal utilities and for the promotion of loyalty and efficiency among the employes. This includes the problems of wages, hours and conditions of work, courtesy of the employes to the public, diligence of the employes in the collection of revenues and their accuracy and honesty in turning them in. In this general connection, the question of labor's direct participation in management will have to be given earnest consideration.

(f) The formulation of a policy with respect to the extension of facilities for utility service and with respect to rates and charges for such service. This involves a consideration of the relative portions of the cost of utility service to be borne by the public at large through taxation and by the private consumers respectively. The question of appropriations from taxes for general services rendered, such as the free convey-

ance of policemen and firemen while on duty and the question of subsidies out of taxation to enable a street railway system to maintain low rates on account of the civic and social benefits to be derived therefrom, have to be considered in this connection.

CONCLUSION: STREET RAILWAY TRANSPORTATION IS A PUBLIC FUNCTION

The street railway companies generally are clamoring for financial relief; though in certain cases the immense development of traffic during 1919, where the fare has not been raised above five cents, is easing up the situation. In other cases, the economies of one-man safety car operation and the increase in revenues attributable to the better service made possible by the use of these cars have cheered up the street railway men a bit. Then there is the mysterious gasoline street car promised by Henry Ford, which, if it materializes, will bring a mixture of blessings and trouble to the local transportation business. It is possible that technical improvements such as these may revolutionize the business and enable it to bear the continued burden of high prices and increased wages without a permanent abandonment of the five-cent fare. It is also possible that the demonstrated incompetencies of private management under the old temptations of monopoly and the unhappy control of speculative investment bankers may give place, under the stress of competition and poverty, to improved methods and better operating results in the future.[1]

But the fundamental relations of the street railways to the public never have been satisfactory. Neither financial relief by means of higher fares, nor subsidies from taxation to support the five-cent fare, nor a revolution in operating methods, will solve the problem. Street railway transportation is a public function; it cannot be put upon a permanently sound basis until the organized community has prepared itself to perform the function.

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[1] Mr. Stiles P. Jones, a member of the Public Utilities Committee, suggests that "in the interest of both the public and the companies emphasis should be placed upon the necessity, during the remaining years of private operation, of the following:

"(1) Every effort on the part of the companies to get on a new basis of understanding with their employees and the public, looking to a larger measure of co-operation for efficient and economical operation of the properties, to increase revenues, and to a larger public usefulness of the utility.

"(2) A new political attitude working to the voluntary elimination of the companies from local and state political activity.

"(3) Acceptance by the companies of a policy of thorough publicity of their affairs, associated with public representation on their boards of directors.

"(4) Associated with any service-at-cost agreement with the municipality, a comprehensive public control of all phases of operation as a means to assure efficiency and economy of operation.

"(5) In the absence of an agreed-upon investment account, voluntary reorganization of the companies' finances to make capitalization fairly represent the value of the property."

APPENDIX

Public Utility Sections of the National Municipal League's Model City Charter

PUBLIC UTILITIES[20]

Section. 63. *Granted by Ordinance.* All public utility franchises and all renewals, extensions and amendments thereof shall be granted or made only by ordinance; but no such proposed ordinance shall be adopted until it has been printed in full and until a printed report containing recommendations thereon shall have been made to the council by the city manager [or the bureau of franchises], until adequate public hearings have thereafter been held on such ordinance and until at least two weeks after its official publication in final form. No public utility franchise shall be transferable except with the approval of the council expressed by ordinance; and copies of all transfers and mortgages or other documents affecting the title or use of public utilities shall be filed with the city manager within ten days after the execution thereof.

Sec. 64. *Term and Plan of Purchase.* Any public utility franchise may be terminated by ordinance at specified intervals of not more than five years after the beginning of operation, whenever the city shall determine to acquire by condemnation or otherwise the property of such utility necessarily used in or conveniently useful for the operation thereof within the city limits.[21] The method of determining the price to be paid for the public utility property shall be fixed in the ordinance granting the franchise.

Sec. 65. *Right of Regulation.* All grants, renewals, extensions or amendments of public utility franchises, whether so provided in the ordinance or not, shall be subject to the right of the city:

(a) To repeal the same by ordinance at any time for misuse or non-use, or for failure to begin construction within the time prescribed, or otherwise to comply with the terms prescribed;

(b) To require proper and adequate extensions of plant and service, and the maintenance of the plant and fixtures at the highest practicable standard of efficiency;

(c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;[22]

(d) To prescribe the form of accounts and at any time to examine and audit the accounts and other records of any such utility and to require annual and other reports by each such public utility; *Provided*, that if a public service commission or any other authority shall be given the power by law to prescribe the forms of accounts for public utilities throughout the state or throughout any district of which the city is a part, the forms so prescribed shall be controlling so far as they go, but the council may prescribe more detailed forms for the utilities within its jurisdiction;

(e) To impose such other regulations as may be conducive to the safety, welfare and accommodation of the public.

Sec. 66. *Consents of Property Owners.* The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance or operation of any public utility;[23] but any such property owner shall be entitled to recover from the owner of such public utility the actual amount of damages to such property on account thereof less any benefits received therefrom; *Provided*, suit is commenced within two years after the damage is begun.

Sec. 67. *Revocable Permits.* Permits revocable at the will of the council for such minor or temporary public utility privileges as may be

Note 20. See body of report where this note is reproduced in full.

Note 21. Where a term limit for the franchise is desired, provision should be made either for amortization of the investment, or at least that portion of it within the limits of public streets and places, during the term of the grant, or for purchase of the physical property at the end of the term.

Note 22. A franchise should include provisions for the readjustment of rates from time to time, or for the accumulation of surplus earnings for the purchase of the property in case rates are fixed for a long period in the grant.

Note 23. In some states there are constitutional provisions requiring the consent of adjacent property owners for the construction and operation of street railways. The constitution of New York requires such consent, or in lieu thereof approval of the proposed construction by commissioners appointed by the appellate division of the supreme court, and confirmed by the court. Some such provision as the latter may be desirable.

specified by general ordinance may be granted and revoked by the council from time to time in accordance with the terms and conditions to be prescribed thereby; and such permits shall not be deemed to be franchises as the term is used in this charter. Such general ordinance, however, shall be subject to the same procedure as an ordinance granting a franchise and shall not be passed as an emergency measure.

SEC. 68. *Extensions.* All extensions of public utilities within the city limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all the obligations and reserved rights contained in this charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in section 64 hereof. In case of an extension of a public utility operated under a franchise hereafter granted, then such right shall be terminable at the same times and under the same conditions as the original grant.

SEC. 69. *Other Conditions.* Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in sections 63 to 72 hereof, whether or not such terms are specifically mentioned in such franchise. Nothing in this charter shall operate to limit in any way, except as specifically stated, the discretion of the council or the electors of the city in imposing terms and conditions in connection with any franchise grant.

SEC. 70. *Franchise Records.* Within six months after this charter takes effect every public utility and every owner of a public utility franchise shall file with the city, as may be prescribed by ordinance, certified copies of all the franchises owned or claimed, or under which any such utility is operated. The city shall compile and maintain a public record of all public utility franchises and of all public utility fixtures in the streets of the city.

SEC. 71. *Bureau of Franchises and Public Utilities.* There shall be established by ordinance a bureau of franchises and public utilities, at the head of which shall be an officer to be appointed by the city manager.[24] Such officer shall be an expert in franchise and public utility matters, and he shall be provided with such expert and other assistance as is necessary to enable him to perform his duties. It shall be the duty of such officer and bureau to investigate and report on all proposed ordinances relating to public utilities, to exercise a diligent oversight over the operation of all public utilities operated under franchises, to report thereon with recommendations to the city manager, to represent the city in all, except legal, proceedings before any state public utilities commission involving the public utilities within the city, and to perform such other duties under the direction of the city manager as may be prescribed by the council.

SEC. 72. *Accounts of Municipally-owned Utilities.* Accounts shall be kept for each public utility owned or operated by the city, distinct from other city accounts and in such manner as to show the true and complete financial result of such city ownership, or ownership and operation, including all assets, liabilities, revenues and expenses. Such accounts shall show the actual cost to the city of each public utility owned; the cost of all extensions, additions and improvements; all expenses of maintenance; the amounts set aside for sinking fund purposes; and, in the case of city operation, all operating expenses of every description. The accounts shall show as nearly as possible the value of any service furnished to or rendered by any such public utility by or to any other city or governmental department. The accounts shall also show a proper allowance for depreciation, insurance and interest on the investment and estimates of the amount of taxes that would be chargeable against the property if privately owned. The council shall annually cause to be made and printed for public distribution a report showing the financial results of such city ownership or ownership and operation, which report shall give the information specified in this section and such other information as the council shall deem expedient.

NOTE 24. In the smaller cities, say, of less than 50,000 population, it may not be feasible to maintain a separate bureau of franchises and public utilities, but in every city where there is no such bureau the duties described in this section should be specifically imposed upon the city manager. The bureau, when one exists, will be a part of the department of public works and utilities; but in the large cities it may be found desirable to create a separate department of utilities as suggested in note 16.